

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
STATE OF OKLAHOMA;)
OKLAHOMA STATE ELECTION)
BOARD; and MICHAEL CLINGMAN,)
as Secretary of the)
Oklahoma State Election)
Board,)
)
Defendants.)

FILED

AUG 08 2003

ROBERT P. DENNIS
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
DEPUTY

No. 02-CIV-1273

**JOINT MOTION TO DISMISS THE ACTION
AND SUPPORTING MEMORANDUM**

This is a civil action under the Uniform and Overseas Absentee Voting Act, 42 U.S.C. § 1973ff, et seq. ("UOCAVA" or "the Act"). The Complaint, filed by the United States on September 12, 2002, alleged that the compressed time period between certification of Oklahoma's federal primary election and primary runoff election gave insufficient time for round-trip transmission of absentee ballots to and from Oklahoma's overseas military and civilian voters. See Complaint, ¶¶ 10-12. Together with the Complaint, the parties filed a proposed consent agreement designed to preserve Oklahoma military and overseas citizens' right to vote in the September 17, 2002, primary runoff

election. The Court entered the consent order on September 12, 2002.

Also on September 12, 2002, the parties jointly moved for a stay of proceedings in this case until July 1, 2003, or until their further joint notice to this Court, whichever occurred first, for the purpose of permitting defendant Oklahoma state election officials to communicate and consult with the Oklahoma state legislature regarding the enactment of a permanent remedy for the violations of UOCAVA identified in the Complaint. The stay, and an administrative closure of the case for the duration of the stay, were ordered into effect on September 17, 2002. Since that time, the United States Departments of Justice and Defense¹ have conferred with Oklahoma election officials regarding proposed state legislation to address the difficulties that prompted this suit and prior similar litigation.²

The Oklahoma state legislature has now passed, and Governor Brad Henry has signed into law, a bill known during the

¹ The United States Department of Defense, Federal Voting Assistance Program ("FVAP"), is the federal government entity charged with facilitating absentee voting by military and overseas citizens worldwide.

² This Court has entertained emergency UOCAVA litigation and ordered immediate relief by consent of the parties in connection with two previous Oklahoma primary runoff elections. See United States v. State of Oklahoma, No. Civ-99-1444-P (W.D. Okla., complaint and proposed consent decree filed, and consent decree entered, Aug. 22, 1988); United States v. State of Oklahoma, No. Civ-98-1271-W (W.D. Okla., complaint and proposed consent decree filed Sept. 15, 1998, consent decree entered Sept. 17, 1998).

legislative process as Senate Bill 358 (2003) that addresses the UOCAVA issues identified by the parties. S.B. 358 passed the Senate on May 27, 2003, and the House on May 29, 2003, and was signed into law on May 30, 2003, as 2003 Okla. Session Laws Ch. 485.

The following is a synopsis of the relevant new provisions.

Section 9 of S.B. 358 creates a new statute, Okla. Stat. tit. 26, § 14-104.1, that requires local electoral boards to accept and count for federal offices an absentee ballot from a UOCAVA-covered voter received by the 14th day after a federal election if the completed ballot was mailed not later than election day, provided that a winner may be declared before that time where the number of absentee ballots sent to UOCAVA-covered voters cannot mathematically affect the outcome.

Section 14 of S.B. 358 amends Okla. Stat. tit. 26, § 14-116, to entitle all UOCAVA-covered voters, and their spouses and dependents, if eligible to register to vote, to receive absentee ballots for their county of residence for the current and the next calendar year's elections with a single application.

Section 16 of S.B. 358 amends Okla. Stat. tit. 26, § 14-118, to permit county election boards to send absentee ballots to UOCAVA-covered voters either by facsimile device or by regular mail.

Section 17 of S.B. 358 creates a new Okla. Stat. tit. 26,

§ 14-118.1, which provides that if an absentee ballot cannot be mailed to a UOCAVA-covered voter who has timely applied for it, and then voted and returned in time to be counted, the secretary of each county election board is authorized--subject to rules to be promulgated by the state board of elections--to send the voter a ballot for federal offices by facsimile device, while also mailing out a regular ballot and counting that ballot instead of the faxed ballot if both are returned in time; the voter may return the voted ballot by facsimile, to a central location designated by the secretary of the state election board, with a statement waiving secrecy of the ballot, and thus avoid mail delays in both directions.

Section 19 of S.B. 358 amends Okla. Stat. tit. 26, § 14-120.1(B), to remove a limitation to certain hardship classes of military or overseas voters from the general entitlement of all UOCAVA-covered voters to use the state write-in absentee ballot described in existing § 14-120.1.

Section 22 of S.B. 358 creates new Okla. Stat. tit. 26, § 14-135, which provides that "if a national or local emergency or other situation arises which makes substantial compliance with [UOCAVA] impossible or unreasonable, such as a natural disaster or armed conflict [or] mobilization . . .," the secretary of the state election board is authorized to "prescribe special emergency procedures as may be necessary to facilitate absentee

voting" by UOCAVA-covered voters "directly affected" who are otherwise eligible to vote in Oklahoma.³

The legislative changes described in this motion, taken together, afford substantial long-term relief to the voters whose rights under UOCAVA the United States has sought to protect in this suit. Additionally, the Oklahoma state defendants have expressed their willingness to consult with the United States Departments of Justice and Defense in promulgating the administrative rules that S.B. 358 describes.

Accordingly, the United States and the defendants jointly move to dismiss this case, with each party to bear its own costs.

³ Oklahoma has also enacted another bill, Senate Bill 260, which advances the primary to the last Tuesday in July, and Section 3 advances the primary runoff, if one is necessary, to the fourth Tuesday in August. S.B. 260 passed the Senate on March 4, 2003, and the House on April 22, 2003, and was signed into law on May 5, 2003, as 2003 Okla. Session Laws Ch. 162. Under prior law the primary was held on the fourth Tuesday in August and the runoff, if needed, on the third Tuesday in September. The result is slightly more time--ordinarily one additional week--between the primary and runoff elections for federal and state offices, as well as more time between the primary runoff, if one is held, and the general election in November of each even-numbered year. The United States does not concede that these election schedule modifications are adequate by themselves to afford the relief sought in this suit; the present joint motion is prompted by the state's recent legislative action taken as a whole.

Respectfully submitted,

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